

PESA 1996

IN

ODISHA



ANSWER WRITING PROGRAM

by

ANVESHAN IAS

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State cabinet amends law, now tribals can sell their land

Ashok Pradhan / TNN / Updated: Nov 15, 2023, 14:23 IST

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After backlash, Odisha govt. puts on hold Cabinet decision of transferring tribal land to non-tribals

The State Cabinet had recently given its nod for mortgaging tribal land in banking institutions and transferring the same to non-tribals for various purposes.

What is PESA?

- The PESA Act was enacted in 1996 “to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas”.
- Part IX, depicts Panchayatiraj Institutes

- Under the Act, Scheduled Areas are those referred to in **Article 244(1)**, which says that the provisions of the **Fifth Schedule** shall apply to the Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Tripura, and Mizoram.
- The Fifth Schedule provides for a range of special provisions for these areas.

- On the basis of the report of the Bhuria Committee submitted in 1995, Parliament enacted “The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996” popularly known as PESA Act, extends Part IX of the Constitution with certain modifications and exceptions to the Fifth Schedule Areas notified in ten States viz.
- Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.
- These Schedule areas in ten States extend in 108 districts (45 fully and 63 partly covered).

What is the Significance of Implementing the Act?

In short, PESA Act aims to

- protecting tribal population from exploitation by making exploitation Gram sabhas as the centre of self governance has laid special thrust to empower Gram Sabha which has not been conferred by any other Act in any State.
- Effective implementation of PESA Act will bring about the following benefits to the tribal population:

- Institutionalize **self-governance** and **people's participation** in decision making.
- By notifying Gram Sabha at village (hamlets or group of hamlets/ habitation or group of habitations) level, **people will feel more comfortable in taking part in the governance of the village.**
- **Reduce alienation** in tribal areas as they will have control over the utilization of public resources in the village through Gram Sabha.
- **Reduction of alienation and resentment among tribal population** will have a positive impact in reducing left wing extremism in the districts affected by it.

- **Reduce poverty and out-migration** among tribal population as they will have control over natural resources such as minor water bodies, minor forest produce, minor minerals, etc. Control over and management of these resources will improve their livelihoods and incomes.
- **Minimise exploitation of tribal population** as they will be able to control and manage money lending, consumption and sale of liquor and also village markets.
- **Check illegal land alienation** and also restore unlawfully alienated tribal land. This will not only reduce conflict but will also improve socio-economic status of tribals.

SCHEDULED AREAS IN ODISHA

Fifth Schedule to the Constitution of India, the revised Presidential Order titled "The Scheduled Areas (states of Bihar, Gujarat, Madhya Pradesh & Odisha) Order 1977" has declared the full districts viz. Mayurbhanj, Sundargarh, Koraput (which now includes the districts of Koraput, Malkangiri, Nabarangapur and Rayagada) , Kuchinda tahasil of Sambalpur district, Keonjhar, Telkoi, Champua, Barbil tahasils of Keonjhar district, Khondamal, Balliguda and G.Udayagiri tahasil of Khondamal district, R.Udaygiri tahasil, Gumma and Rayagada block of Parlekhemundi tahasil in Parlakhemundi Sub-division and Suruda tahasil (excluding Gazalbadi and Gochha Gram Panchayats), of Ghumsur sub-division in Ganjam district, Thuamul Rampur and Lanjigarh blocks of Kalahandi district and Nilagiri block of Balasore district as Scheduled Areas of the state.

- After reorganisation of districts in the state, 7 districts fully and 6 districts partly are covered under the Scheduled Areas of the state.
- Scheduled Areas are areas in India with a preponderance of tribal population subject to a special governance mechanism wherein the central government plays a direct role in safeguarding cultural and economic interests of scheduled tribes in the area.

3. Notified Fifth Schedule Areas (FSA): The details of notified FSA/PESA areas in the State of Odisha are as under:

- ✓ PESA District (Fully & Partly covered): 13
 - PESA District (Fully covered): 6 (Malkangiri, Nowarangpur, Rayagada, Mayurbhanj and Sundargarh, Koraput)
 - PESA District (Partly covered): 7 (Ganjam, Keonjhar, Sambalpur, Kandhamal, Kalahandi, Balasore and Gajapati)
- ✓ PESA Blocks: 119
- ✓ PESA Panchayats: 1921
- ✓ PESA Villages: Not Available

Status of implantation of PESA Act in the State of Odisha:

The status of implementation of PESA Act in the State is as under:

- The State Government of Odisha has not yet framed PESA Rules.
- The State of Odisha has made good progress in respect of compliance of concerned State subject laws.
- However, few subject laws are yet to make PESA compliant. The status of compliance of concerned subject laws are as under:

States	Land acquisition	Excise	Forest produce	Mines and minerals	Agri produce market	Money lending
Odisha	N	Y	Y	Y	N	Y

- **Minor Forest Produce:** Ownership and Management of 68 MFPs has been entrusted to GPs / Gram Sabhas.
- **Enforcement of Prohibition & Sale of Intoxicant:** no such license of exclusive privilege shall be granted except with the prior approval of the concerned Gram Panchayat with the concurrence of the Gram Sasan the G.P. is to give permission within 30 days.
- **Money Lending:** The SC & ST Development Department has already taken up for amendment of the Orissa (Scheduled Areas) Moneylenders Regulation, 1967" to empower the GP for control over money lending & issue of license in Scheduled Areas.

- **Minor Minerals:** The Mines & Minerals (Development & Regulation) Act of 1957 (67 of 1957) has been amended wherein no perspective license or manning / quarry lease or its renewal or auction of source shall be granted without recommendation of the concerned GP.
- **Control of Village Markets:** Although Panchyati Raj Department has amended its Act transferring the power to Gram Panchayat but the matter is subjudice.

Implementation challenges

- The State Governments have argued that the power of Gram Sabhas can extend only to forest located within the revenue boundaries of a village. This one provision, if accepted, would nullify the law, because reserved forest in most States is not located within a revenue boundary of a village. The spirit of the law is clearly to extend ownership to the Gram Sabha of MFP from forests located in vicinity of the village of traditional access.

- Another flaw is in the interpretation of the concept of ownership of MFP by Gram Sabha. The common view is that ownership does not provide Gram Sabha the right to take any decisions related to stewardship, management or sustainable harvesting of MFPs.

- The sale of tribal lands to then on-tribals in the Scheduled areas is prohibited.
- But the transfer continues to take place and have become more perceptible in the posed liberalization period.
- The PESA provisions are intended to intrinsically protect the resources of the tribal communities and empower them to act against the forcible acquisition.
- But today, the acquisition of individuals and communitys resources for industry in violation of these provisions is leading to conflicts in several PESA areas.

- The Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was a result of the polity responding to protected struggles by tribal communities and movements to assert rights over the forest land they were traditionally dependent on.
- The Act turned the Government colonial policy on its head which it established the rights of the State over the Forest over traditional rights of the community.
- It is evident from this that there is still poor recognition of various rights favouring the tribals clearly violating the letter and spirit of PESA as well as FRA.

- But the current alienation is a manifestation of misgovernance and a lasting solution also lie in an honest implementation of PESA and putting people aspirations at the centre of public policies in schedule five areas.

- The Orissa Regulation 2 of 1956 was enacted to control and check transfer of immovable properties of tribals in Scheduled Areas of the state. It put a complete ban on transfer of land belonging to ST persons to non-ST persons.
- ‘Amendment to Regulation-2 of 1956 regarding transfer of tribal lands’
- a member from the scheduled tribe (ST) can gift, exchange for public purposes or obtain loan by mortgaging a plot of land in a public financial institution for agriculture, construction of residential house, higher studies for children, self-employment, business or establishment of small scale industries or transfer it in favour of a person not belonging to ST community for these purposes.

Land Holdings

- the CAG in its draft report on 'Land Management in the Scheduled Areas of the State' pointed out that land holding in 13 scheduled districts - Balasore, Mayurbhanj, Sundargarh, Koraput, Malkangiri, Nabarangpur, Rayagada, Sambalpur, Kandhamal, Keonjhar, Ganjam, Gajapati and Kalahandi - is on the decline.
- In a 10 year span between 2005-06 and 2015-16, tribal land holding (used for agricultural production entirely or partly) decreased to 15.38 lakh hectare (ha) in 2015-16 from 17.48 lakh ha in 2005-06, registering a decrease by 12 per cent. There were 14.07 lakh land holders in 2005-06 which marginally increased to 14.61 lakh in 2015-16.

- In case of tribal population, despite implementation of Forest Right Act since 2005-06 and restriction on sale of their land to non-ST persons, decrease in their land holding is suggestive of the fact that a larger chunk of their land might have been acquired by government for public purpose

- To sell their land, members of ST communities will have to obtain written permission from the sub-collector. If the sub-collector declines to give permission, an ST can appeal to the collector within six months, whose decision shall be final.

- The audit report revealed in absence of fixation of time limit for disposing of cases filed under the act, of the total 2,134 pending cases, 1,347 cases remained pending beyond 10 years and 391 cases were pending for six to 10 years. In 20 test-checked cases involving 66.57 acre of land, despite receipt of enquiry report from the tehsildar between July 2008 and September 2021, the cases had not been disposed of by the sub-collector concerned.
- In these 20 cases, 10 government organisations were found to have encroached upon 13.44 acre for construction of school, medical college and hospital, check dam, electric sub-station and road. Besides, seven private organisations usurped 52.12 acres for mining and other activities, and three individuals encroached 1.01 acre for cultivation.

AMENDMENT VIS-À-VIS PESA ACT

the amendment is in contravention of the PESA Act, 1996. Once an area is declared as a scheduled area, it attracts PESA. Under the act, all the community resources belong to gram sabha and any land transfer is not possible without its consent.

Section 4 (m) (iii) of the PESA Act, 1996 gives gram sabha the power to not only prevent alienation of land but also to restore illegally alienated land. Besides, the legislature of a state is barred from making any law inconsistent with the features given under Section 4 of the PESA Act.

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you

